



**COMMONWEALTH of VIRGINIA**  
*DEPARTMENT OF ENVIRONMENTAL QUALITY*

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

**PIEDMONT REGIONAL OFFICE**

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Robert G. Burnley  
Director

Gerard Seeley, Jr.  
Piedmont Regional Director

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION  
SPECIAL ORDER BY CONSENT  
ISSUED TO  
HERCULES INCORPORATED**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 10.1-1185 and 62.1-44.15(8a) and (8d), between the State Water Control Board and Hercules Incorporated, for the purpose of resolving certain violations of environmental law and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Hercules" means Hercules Incorporated, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "Facility" means the Hercules Incorporated, Aqualon Division property located in Hopewell, Virginia.

8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Hercules owns and operates the Aqualon Division Facility in Hopewell, Virginia. This Facility is an industrial user that discharges process wastewater to the City of Hopewell's Regional Wastewater Treatment Facility (HRWTF).
2. Between 8 p.m. and 10 p.m. on February 19, 2004, a 100,000 pound mix of 63% sodium hydroxide drained to the process sewer discharging to HRWTF. Hercules environmental staff discovered the lost caustic and reported it to HRWTF mid-afternoon on February 20, 2004. At the time of the notification HRWTF staff were already addressing the upset caused by the discharge that resulted in a fish kill in Gravelly Run on February 20, 2004.
3. On February 21, 2004, Department staff conducted a fish kill investigation in Gravelly Run. A total of 202 fish were counted with an estimated replacement cost of \$615.18.
4. The Department issued an NOV to Hercules on March 30, 2004, for violation of the Water Quality Standards. The sodium hydroxide interfered with the biological process in the HRWTF treatment system that then causing a pass through of all the industrial influent flowing into HRWTF (9 VAC 25-21-770 A.1. & B.4.). There is no specific limit for sodium hydroxide in the pretreatment permit, however the resulting discharge from HRWTF is a violation of the Water Quality Standards general criteria. (9 VAC 25-260-20 A.)
5. Hercules has entered into a Consent Order agreement with HRWTF that requires the following; 1.) develop a slug control plan to address future discharges; 2.) a study to evaluate process control options in dealing with similar discharges; 3) a schedule for re-training process operators on the effect of abnormal discharges on the HRWTF; 4) reimbursement for costs associated with the upset; and, 5) a City of Hopewell SEP of \$15,000.

### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Hercules, and Hercules voluntarily agrees as a compromise of disputed claims, to pay a civil charge of \$13,200 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Hercules. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Hercules shall submit a payment of \$400.00 within 30 days of the effective date of the Order to reimburse DEQ for its costs incurred during the course of the fish kill investigation. The payment shall note that it is being made pursuant to this Order and shall note the Federal Identification Number for Hercules. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Hercules shall submit a payment of \$615.18 within 30 days of the effective date of the Order to reimburse the Virginia Department of Game and Inland Fisheries for fish replacement costs. The payment shall note that it is being made pursuant to this order and shall note the Federal Identification Number for Hercules. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Hercules, for good cause shown by Hercules, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Hercules by DEQ on March 30, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, Hercules admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.

4. Hercules consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Hercules declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Hercules to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Hercules shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Hercules shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Hercules shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Hercules intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

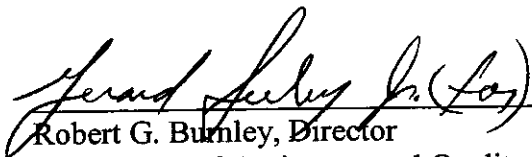
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Hercules. Notwithstanding the foregoing, Hercules agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. Hercules petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - b. The Director or Board terminates the Order in his or its sole discretion upon 30 days notice to Hercules.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Hercules from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Hercules voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of December 3, 2004.

  
Robert G. Burnley, Director  
Department of Environmental Quality

Hercules voluntarily agrees to the issuance of this Order.

By: James J. Reyher

Date: 10/19/04

Commonwealth of Virginia

City/County of Hopewell

The foregoing document was signed and acknowledged before me this 19<sup>th</sup> day of October, 2004, by James J. Reyher, who is  
(name)

Plant Manager of Hercules, on behalf of the Corporation.  
(title)

Susanne E. Nazari  
Notary Public

My commission expires: 10-31-2005